



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Pre-Decisional
FOIA Exempt

RELEASED
DATE 11/17/2022
RIN #
INITIALS KGO

BY EMAIL

Ms. Ann Coyle
Region 5 Grants Competition Dispute Decision Official
Office of Regional Counsel
77 W Jackson Blvd
Chicago, IL 60604

May 3, 2022

Re: FY22 Brownfields Cleanup Grant Application Denial Appeal – Fort Wayne, IN

Dear Ms. Coyle:

The U.S. EPA Region 5 Brownfields program has received and reviewed the additional materials provided by the City of Fort Wayne, Department of Redevelopment, IN (City) on April 22, 2022. In response to the added documents, we would like to emphasize a point we previously discussed in our prior correspondence: in order to meet the Bona Fide Prospective Purchaser defense, section 312.21(d) of the All Appropriate Inquiry Rule (AAI) states that an environmental professional's signature AND a declaration of compliance, including the date of the declaration, are required. In this case, the brownfields cleanup grant proposal that the City submitted stated that site acquisition occurred on November 30, 2017, and the declaration (the date the environmental professional signed the document) occurred on December 1, 2017 (page 5 of the application). This means that the environmental professional for the City signed the declaration one day late.

Subpart C of 40 CFR 312 reviews the requirements for AAI. Section 312.21(a) requires that the inquiry be conducted or overseen by an environmental professional. Section 312(c) requires the due diligence to be conducted in the form of a written report (this is typically an ASTM standard practice Phase I report). Section 312.21(d) states that:

“The environmental professional must place the following statements in the written document identified in paragraph (c) of this section and sign the document:

- “[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part.”

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- “[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”

It follows that without a signature, the written report (the Phase I) is incomplete, and without a complete written report, the requirements for All Appropriate Inquiry are not met. When All Appropriate Inquiry standards are not met, an applicant has failed to demonstrate it is eligible for a grant as a Bona Fide Prospective Purchaser.

The Region 5 Brownfields Program requests that the GCDDO sustain EPA’s determination that the City of Fort Wayne failed to meet the FY22 Cleanup Grant threshold criteria because, as explained above, the AAI requirements were not fully met.

Thank you very much for your time and please let me know if you need any additional information.

Sincerely,

Brittney Nadler

Brittney Nadler
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(312) 886-5740

Attachments:

- R05-22-C-011 (*Fort Wayne’s FY22 Cleanup Grant Application*)

Cc: Puja Lakhani, R5 Office of Regional Counsel
Thomas Kenney, R5 Office of Regional Counsel
Patrick Chang, HQ/SWERLO
Jerry Minor-Gordon-English, HQ/OBLR
Allen Melcer, R5 Redevelopment & Program Services Branch Manager
Gary Schafer, R5 Brownfields Program Section Supervisor
Julie MaGee, R5 Brownfields Program Section Supervisor